

CURLING v. RAFFENSPERGER

**PLAINTIFF
RICARDO DAVIS
COMPLETE CLOSING STATEMENT**

February 1, 2024



Thank you

To the court for its thoroughness in examining the massive evidence assembled during the last 6 years and its courageous landmark rulings.

To the co-plaintiffs and attorneys for carrying the case to a successful verdict against the previous unverifiable voting system.

And to the Defendants for standing with Mr. Davis in his right to be represented by the counsel of his choice.



Not the People's Choice

Ballot Marking Devices were mandated by the legislature in HB316 over objections of hundreds of citizens.

The current QR-coded Dominion BMD System was purchased by the SOS despite warnings he received even before he took office.

Plaintiffs head organizations representing 50,000+ disenfranchised voters who want parts or all the Dominion BMD System permanently removed.

Issues Set for Trial

Summary Judgement Order 11-10-2023

- Constitutional deficiencies of Dominion BMD system. Pg 5
- State officials' inaction can also harm our constitutional rights. Pg 114

*The claims of Mr. Davis have always been tailored to these two aspects
of the court's authority in the case*

Relief sought by Plaintiffs since 2019

Declare entire Dominion BMD system constitutionally deficient.

Enjoin the state from using the system.

Prohibit state from enforcing laws requiring use of the system.

Other Plaintiffs recently chose to constrain their relief to the BMD but the system has more constitutional deficiencies in its other components too.

Device vs. System

System: “*A group of devices ... forming a network especially for distributing something or serving a common purpose*”. Webster’s Dictionary

A device is not a system.

The purpose of our system is voting.

The simple act of marking an uncast ballot is not voting.

Davis' Supplement

Co-Plaintiffs provided overwhelming evidence that our voting system is irreparably unsecure and that the Coffee Co. exposure threatens future elections.

Defendants have countered that there is no evidence that the system was compromised or failed to count votes as cast during live Georgia elections.

Mr. Davis sought to supplement the Plaintiffs' claims with enough evidence of actual vote count issues in live elections to counter Defendants' claim.

A Compelling Case Despite Restrictions

Despite being restricted to no witnesses, no deposition designations and limited questions, Mr. Davis built a case of Constitutional deficiencies:

- Unexplained vote counting failures

- Double scanned and double copied ballots

- Erroneous ballot rejections statewide

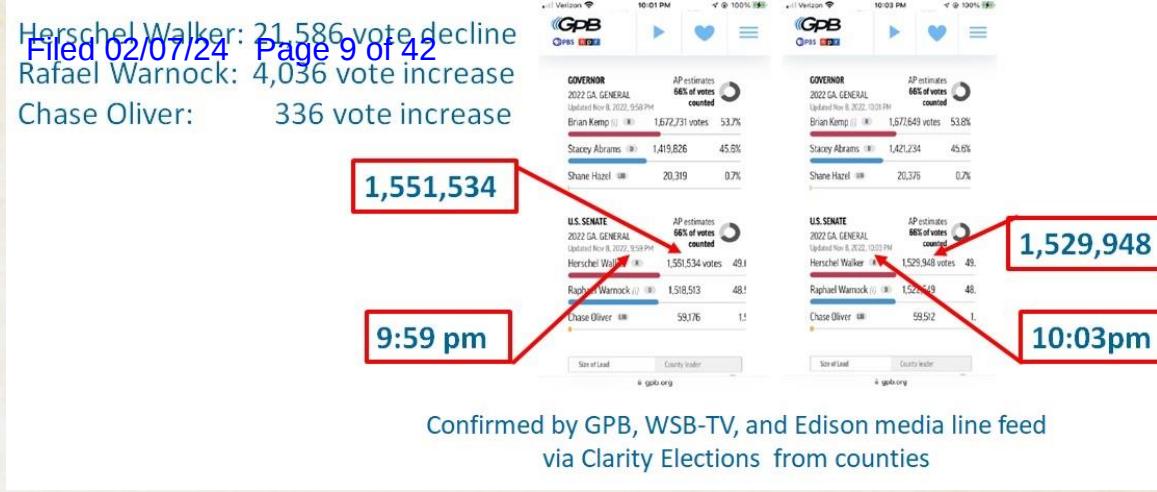
His intent was to overcome the Defendants' primary argument and help his fellow plaintiffs achieve the judgment they sought for 6 years

Constitutional Deficiencies Disappearing Votes

Blake Evans confirmed a 20,000+ vote drop for one 2021 U.S. Senate candidate in a four-minute span on Election Night.

He blamed a county for older interim upload before admitting he never investigated it.

There is no evidence other candidate vote totals decreased at the same time thus his possible explanation is implausible.



Constitutional Deficiencies System Selects Wrong Winners

DeKalb District 2 Commission results reported on May 24					
Candidate	Election Day	Advance Voting	Absentee by Mail	Provisional	Total
Lauren Alexander	2993	1569	304	0	4866
Marshall Orson	3524	1590	413	0	5527
Michelle Long Spears	1029	2194	447	0	3670
Total Votes	7546	5353	1164	0	14063

Includes results from 5 redistricted precincts

District 2 results of audited hand count reported on June 3					
Candidate	Election Day	Advance Voting	Absentee by Mail	Provisional	Total
Lauren Alexander	3004	1561*	306	7	4878
Marshall Orson	2068	1541	418	5	4032
Michelle Long Spears	4078	2291	450	4	6823
Donald Broussard	53	39	43	0	135
Total	9203	5432	1217	16	15868

System failed to count 1805 votes

System shorted Mrs. Spears 3049 votes, added 1456 unearned votes to Mr. Orson

Michelle Long Spears, May 24, 2022 DeKalb Dist. 2 Commission Primary candidate, received zero votes in the precinct where she and her family lived and voted.

After a machine recount produced the same results, a hand count audit found the Dominion BMD System selected wrong winners.

Mr. Barnes attributed it to “*human error*” but did not explain why system failed to count 1805 votes.

SEB 2022-348 complaint shows audit log samples of how tabulators rejected ballots.

There is no evidence the SOS audited any other May 24, 2022, race in the state and 20 months later the case is still unresolved.

Constitutional Deficiencies Ballots Rejected Statewide

Mr. Evans authenticated SEB2022-348 complaint that established a ballot rejection error existed in 65 of 67 counties surveyed.

Mr. Evans authenticated letter from the Tenn. SOS recommending to discontinue use of Dominion BMD system without delay.

Mr. Evans tried to claim same QR Code mismatch error does not exist in Georgia before admitting he never investigated it.

Audit logs in complaint show a statewide error

Constitutional Deficiencies U.S. Supreme Court Precedents

"We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box." *U.S. v. Mosely* 238 U.S. 383 (1915)

"It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote ... and to have their votes counted."
Reynolds v. Sims 377 U.S. 533 (1964)

"The right to vote ...[cannot]... be diluted by ballot box stuffing." *Reynolds*
Double-counted and duplicate ballots allow our votes to be diluted

Brad Raffensperger's Credibility



The Secretary of State's book entitled "*Integrity Counts*"

"the ultimate fact-check in the United States...occurs in courts of law, where witnesses swear to tell the truth".

"If you want to know the truth, watch what happens in court."

Months later, he appealed to the 11th Circuit to avoid testifying under oath about Georgia elections:

"The Secretary seeks a writ of mandamus to correct the district court's clear and indisputable error in compelling the Secretary to personally testify at Plaintiffs' behest in the upcoming trial"

Case 1:17-cv-02989-AT Document 1750-1 Filed 12/21/23 Page 1 of 58
No. 23-_____

In the
**United States Court of Appeals
for the Eleventh Circuit**

IN RE BRADE RAFFENSPERGER,
Petitioner.

On Petition for Writ of Mandamus to the United States District Court
for the Northern District of Georgia, Atlanta Division.
Donna Curling et al. v. Brad Raffensperger, et al.
No. 1:17-cv-2989-AT — Amy Totenberg, Judge

PETITION FOR WRIT OF MANDAMUS

RELIEF NEEDED BY JANUARY 8, 2024

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Counsel for Petitioner

Hypocrisy

Matt Mashburn's Credibility



Matt Mashburn, then State Election Board Chair, was not aware that the State Election Board was a Defendant in *Curling v. Raffensperger*.

He was not willing to authenticate his own deposition.

He also could not recognize the SEB2023-025 complaint after claiming he knew all about it.

That complaint documented Dominion BMD system vote count failures and manipulation of electronic vote records.

Blake Evans' Credibility



Blake Evans, State Election Director, stated he had no knowledge of vote dilution or votes not counted as cast but:

- He then admitted he was aware of the 2022 DeKalb County District 2 Commission primary where the voting system selected the wrong winners.
- He acknowledged Coffee Co. machine recount problems in 2020 General Election.
- He admitted he was aware of the Fulton Co. duplicate pristine ballot case.

He also claimed ProV&V conducted audits in 6 Georgia counties, **but no documents exist to show they conduct audits or visited any county he named.**



Michael Barnes' Credibility

Director Michael Barnes authenticated under cross a letter he wrote to Bibb Co. Elections Supervisor stating she could overwrite in-person voted memory cards containing election records just weeks after an election.

The cards contained ballot images, audit logs and cast vote records from the election.

He considered it unnecessary to retain original election records that have 22-month and 24-month retention periods under federal and state law.



Gabriel Sterling's Credibility

COO Gabriel Sterling admitted in cross examination that he told Joe Rossi there was 100% certainty ballots had not been tallied multiple times.

Gov. Kemp's 36-point study shows examples of hundreds of double scanned ballots and thousands of double reported ballots in the Fulton Co. 2020 hand count audit. [Exhibit 208](#)

Ryan Germany and Blake Evans admitted under oath there were double scanned ballots in Fulton County.



Ben Adida's Credibility

State expert, Ben Adida, said Georgia was the first state to conduct a Risk-Limiting Audit (RLA) of the 2020 General Election presidential contest.

Dr. Stark testified extensively that RLAs are meaningless with BMD elections and a full hand count audit was conducted not a RLA.

State expert, Dr. Juan Gilbert admitted under cross that an RLA cannot detect what the BMD showed to the voter.

For years the SOS office claimed the hand count audit confirmed machine counted election results but **not one Defendant said that under oath.**



Ryan Germany's Credibility

Ryan Germany, former SOS Legal counsel, wrote a two page, superficial 2017 report claiming it was “*standard procedure*” to wipe statewide election prep servers in CES at KSU days before this case was first filed.

He never ensured remediation activities were performed to determine impact of the exposure and whether any unauthorized access occurred.

The court found his claim to be “*flatly not credible*”.



Ryan Germany's Credibility

Mr. Germany's claimed the CES KSU exposure did not affect the 2016 election.

The record shows Logan Lamb found the entire Georgia election prep system was wide open for anyone in the world to hack during the 2016 election.

Questions whether the exposure was due to a Drupal web content management system defect.

No evidence was ever submitted that CES upgraded Drupal since CES was established in 2003 or that it no longer impacts election preparation **today**.

It is self evident **the 2016 election and previous elections were vulnerable to external worldwide hacking for over a decade**.



Ryan Germany's Credibility

Ryan Germany also tried to imply to the court, without providing any evidence, that Scott Hall's affidavit about duplicate pristine ballots was false.

He attempted to retract the statement when he was challenged about it under cross and Defendants opposed rebuttal from a senior poll manager with first hand knowledge of the duplicate counterfeit ballots.

Mr. Evans acknowledged the AG office submitted an amicus brief on behalf of the SOS attempting to block inspection of the duplicate ballots in this still active case.

Mr. Evans acknowledged during cross examination that there is **no policy to mitigate illegitimate ballots.**



Ryan Germany's Credibility

Now the court is asked to believe Mr. Germany's 12-10-20 email claiming Eric Chaney falsely testified the SOS was not helping Coffee Co. resolve machine recount problems.

Exhibit 522

The record shows requests for forensic audits started as early as an email from now Lt. Gov. Burt Jones to the Butts Co. election supervisor on November 2, 2020.

The request for forensic exams was included in the 11-25-20 *Pearson v. Kemp* relief and the SOS office chose to fight forensic audits in that case.

Had they done their due diligence to conduct forensic audits when 2020 vote counting issues arose, the Coffee Co. exposure may never have occurred.

Frances Watson's Credibility



Frances Watson, chief investigator, tried to rescue Mr. Germany by saying as an adverse witness she had no reason to believe Ryan Germany's 12-10-20, email was inaccurate.

She stated she went to Coffee Co. and determined the machine recount problems were due to batches of ballots not being separated properly.

No evidence she or Joshua Blanchard is qualified to make that determination.

No defense witness claimed changing the size or separation of batches would cause the voting system to count differently.

If true, that alone would prove the Dominion BMD System is constitutionally deficient.



Coffee County Recount Issues

Communications sent by the Coffee Co. Board of Elections to the SOS office and the General Assembly were documented in Eric Chaney's letter. [Exhibit 309](#)

The spreadsheet included in Exhibit 4 of the letter shows the machine recount added 39 votes to the Presidential election results with no changes in ballots cast.

The last Dominion BMD System recount attempted then failed to recognize any votes for 185 additional ballots that were found and included in the subsequent recount.

Recount failures caused the board to unanimously certify the hand count audit results as explained in Ernestine Thomas Clark's precise Dec. 4, 2020, letter.

She is now listed as an observer in depositions of other Coffee Co. personnel.

Why Did Coffee Co. Seek A Forensic Exam?



From Mr. Chaney's letter, the court may determine that system failures were the reason Coffee County sought a forensic exam of the server.

The record shows that no external actor besides Sullivan Stricker personnel touched the equipment during the copy and subsequent testing.

The SOS office did not do its job in ordering a forensic exam as soon as the system failed to recount the 2020 General Election in Coffee and other counties.



Dominion Components Imaged Except BMD

Sullivan Stricker's Paul Maggio testified they image copied the server to a secure portal and the portal link was given to a list of individuals with accounts. But he admitted any of those individuals could provide a copy to others without detection.

He testified they were able to image copy the software on all major Dominion components but was **not** successful in imaging the BMD. 1-17-24 Vol 6A, 165:2-9

Constraining the Plaintiffs relief to BMDs ignores the extensive security risks to all other components of the Dominion BMD System including scanners and servers.

Replacing BMDs alone would not solve the security risks raised during the trial.

Dominion's Constitutional Deficiencies

Mr. Davis sought to call deposed individuals who actually examined Sullivan Strickler's image copy or directed tests on the Coffee Co. server and scanners:



Ben Cotton – a highly credentialed cyber forensics expert not allowed to testify about remote access vulnerabilities in the Coffee server image.



Jeff Lenberg – a nation state vulnerability testing expert with 30 years of experience at Sandia National Labs not allowed to testify about real-time remote changes affecting ballot rejections.

The record shows corroborating evidence of remote wireless access by Dominion personnel during the 2021 U.S. Senate runoff to correct a ballot rejection issue.

No Way to Secure a Digital Ballot Image



Dr. Stark's March 9, 2020, testimony and proffered declaration findings show Fulton Co. certified over 17,000 votes that have no corresponding ballot images at all.

A VoterGA report submitted by Mr. Davis corroborates Dr. Stark's findings and confirms that Fulton Co. 2020 digital ballot images were electronically altered prior to final certification.

A proffered SEB2023-025 election board complaint documents several other types of electronic vote manipulation occurring in the Fulton Co. 2020 General Election.

State expert Dr. Juan Gilbert identified this severe electronic voting risk stating “*There is no known way to secure a digital ballot image.*”

Logic and Accuracy Facade



Dr. Appell confirmed a key finding in Alex Halderman's Security Analysis when he explained systems have internal clocks and malware can be programmed to cheat on certain days.

Dr. Halderman concluded “*No practical method of pre-election or parallel testing can rule out malware-based fraud.*”



Dr. Halderman's Greatest Concern

Dr. Halderman testified to being concerned about the danger of spreading of malware from the election preparation center through county servers.

He confirmed his concern that “*the Dominion equipment could be hacked by loading malware on a machine that could then spread across the system via the EMS*”

It is self evident that an infected CES server can spread malware to all county servers.

It is also self evident that infected county servers can spread malware to every component in any county system for every election.

Is Mr. Barnes responsible for cybersecurity?



Michael Barnes

Q. "And you have no responsibility, no direct responsibility for cybersecurity, correct?"

A. "Correct."

Q. "And you're also not aware of how malware can be designed to defeat logic and accuracy testing on voting equipment, right?"

A. "Correct."

A. "The people that maintain for the Secretary of State's office their infrastructure security measures are the Secretary of State's IT division."

Q. And who there, historically, in the last ten years has been responsible for that?

A. "Merritt Beaver has been our CIO."

1-11-24 Vol 5A, 58:14-17, 59:12-20, 159:16-160:8

Is Mr. Beaver responsible for cybersecurity?



Merritt Beaver

"I can't speak to the Dominion system. I have already said that. We outsource the security for the Dominion system to Dominion."

Q. Was Dominion then required to report to you with regard to anything regarding the cybersecurity of its electronic voting systems?

A. "Dominion did not report to me."

Q. And then, Mr. Beaver, is there anyone else in the Secretary of State's office that has greater authority than you for cybersecurity on the electronic voting systems?

A. "I report to Gabe Sterling."

1-16-24 Vol 5A, 105:6-113:1



Is Mr. Sterling responsible for cybersecurity?

Gabriel Sterling

“The physical and the cybersecurity surrounding that would be the responsibility of Michael Barnes and his team there”

“It falls to Michael Barnes and his team for the physical security, as well as the cybersecurity with the IT team.”

And when you say IT team... is there someone over that team?

“We have gone through some personnel changes, and we just hired a new CIO, so I'm not sure whose responsibility it is as I sit here right this second, no.”

1-17-24 Vol 6a, 12:20-13:25

Is Dominion Responsible for cybersecurity?



Defendants called no one from Dominion provide evidence Georgia's voting system has any cybersecurity protection and they do not protect CES infrastructure anyway.

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Nobody Is Responsible for Cybersecurity



*The SOS office is incapable of directing elections
that rely on electronic voting components*



Three Years of Hacks and No Remediation

We ask the court to take note that three years after Dr. Halderman hacked a BMD in front of the court the SOS office still ignores his findings.

Now, after multiple elections have been conducted on this vulnerable system he returned to court and hacked it again.

This should be enough to prove **the SOS office is unwilling to protect Georgia voters from risks and vulnerabilities that are largely undetectable in conducting elections.**



The Dominion BMD System Bottom Line

Defendants have no evidence Dominion has any software patch that would solve all the problems uncovered in Dr. Halderman's Security Analysis

Dr. Halderman summed up Georgia's Dominion BMD dilemma in his Security Analysis: "*it was developed without sufficient attention to security during design, software engineering, and testing.*"

He concluded "***In my view, it would be extremely difficult to retrofit security into a system that was not initially produced with such a process.***"

You Cannot Check Your Vote



Dr. Appell stated in rebuttal “*The consensus among experts is to use hand marked paper ballots and scanners because if scanners don’t tabulate correctly, we can always just count the ballots.*”

While that may be the consensus amongst experts, Georgians cannot count cast ballots because the Defendants actively oppose sunshine for those ballots even with an amicus court brief.

Georgians have waited over three years to see legally sealed mail-in ballots from Fulton Co.’s 2020 election. Even after a State Supreme Court victory, the public is still unable to detect how many counterfeit ballots there were, nor verify Fulton Co’s dubious electronic results.

Dr. Gilbert summed up Georgia’s election transparency problem when he stated, “*You can check your bank account but not your vote.*”

Georgia Government Has Failed

The Georgia legislature, judicial system and executive branch refuse to protect constitutional rights so Georgians have no other remedy.

The legislature mandated BMDs with HB316 over security objections from many nationally recognized experts.

The SOS office has proven to be wholly inept if not worse at resolving the ensuing problems.

Georgia courts have already ignored this court's previous findings that the Dominion BMD voting system violates two Georgia laws.



How Will This Case be Memorialized?

The court has urged the parties to settle this matter, but the Defendants continue to delay resolution after 6 years.

This case has amassed the most comprehensive set of evidence ever assembled in a Georgia election case.

But if Plaintiffs are not granted full relief from the Dominion BMD system, this case will be remembered for the evidence Mr. Davis attempted to present instead of the evidence it uncovered.

Securing Our 2024 Elections

Georgia's Dominion Democracy Suite 5.5 BMD system was discontinued in Tennessee, replaced in Colorado, and had been rejected in Texas before Georgia purchased it.

The trial record also shows Georgia's approach to auditing is totally inadequate to ensure constitutionally sufficient protection for voters.

The Defendants constant fight against election transparency and secretive permanent storage of election ballots also severely harms Constitutional voting rights.

Relief Requires a Clear Ruling

Because of the Secretary's intransigent or incompetent failures, it is appropriate for this court to step in to protect both Georgia voters and those who are threatened in other states because they vote in federal elections.

We urge the court to conclude **the entire Dominion BMD system is constitutionally deficient** as other states have done without court action.

We urge the court to declare **the Defendants inability to conduct any type of electronic voting election has severely harmed our constitutional rights.**

We further urge the court to recognize the **lack of election transparency also severely burdens our Constitutional rights.**